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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII

KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF: )

THE DOE RUN RESOURCES CORPORATION )  
Herculaneum, Missouri )

Respondent. )

Proceedings under Section 7003 of the )  
Resource Conservation and Recovery )  
Act as amended, 42 U.S.C. Section 6973; )  
Sections 104, 106, 107, 122 of the )  
Comprehensive Environmental Response )  
Compensation and Liability Act, as )  
amended, 42 U.S.C. §§ 9604, 9606, )  
9607, and 9622, and Section 260.530 RSMo. )

Docket No. RCRA-7-2000-0018  
CERCLA-7-2000-0029

ADMINISTRATIVE ORDER  
ON CONSENT

SECOND MODIFICATION 07/17

aop

Site:	Herculaneum
ID #:	MDNR 2626373
Break:	1.1
Other:	5/17/04

I. PRELIMINARY STATEMENT

1. In May 2001, the United States Environmental Protection Agency ("EPA"), the Missouri Department of Natural Resources ("MDNR") and The Doe Run Resources Corporation ("Doe Run" or "Respondent") voluntarily entered into an Administrative Order on Consent ("Order") concerning the Doe Run lead smelter in Herculaneum, Missouri and areas in the vicinity of the smelter that have been impacted by the smelter operation. The Order requires Respondent to conduct certain response actions to abate an imminent and substantial endangerment to the public health, welfare, and the environment that may be presented by (i) the actual or threatened release of hazardous substances at or from the facility, and/or (ii) the past or present handling, storage, treatment, transportation or deposition by Respondent of any solid waste or hazardous waste. The Order was issued by EPA and MDNR pursuant to Section



7003(a) of the Solid Waste Disposal Act of 1976, commonly referred to as the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984 (hereinafter referred to as "RCRA"), 42 U.S.C. § 6973(a); Sections 104, 106, 107, and 122 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § § 9604, 9606, 9607, and 9622 ( hereinafter referred to as "CERCLA"); and Section 260.530, RSMo.

2. One of the areas addressed by the Order is a slag disposal area known as the "slag pile." One of the purposes of this Second Modification of the Administrative Order on Consent ("Second Modification") is to change certain portions of the Statement of Work which relate to the slag pile. This Modification requires Respondent to evaluate on an expedited basis final cleanup alternatives for the slag pile, but does not require Respondent to implement or perform any cleanup actions with respect to the slag pile. A second purpose is to accelerate the schedule for cleanup of some residential soils. A third purpose is to defer Doe Run's obligation to reimburse EPA's oversight costs. A fourth purpose is to require Doe Run to reimburse homeowners in Herculaneum for increased water bill payments that homeowners have made in the two months immediately following Doe Run replacement of their residential soils.

3. Paragraph 131 of the Order provides that minor modifications to any plan or schedule in the Order may be made in writing by the EPA Project Coordinator, following consultation with MDNR's Project Coordinator and Respondent's Project Coordinator. Paragraph 131 additionally provides that the remainder of the Order, including the Statement of Work attached to the Order as Appendix A, may only be modified in writing by the signature of Respondent and the delegated EPA and MDNR signatories, or their designee(s). The modifications to the Order that are being made herein are not minor modifications, and the modifications are therefore

being made pursuant to this Second Modification of the Administrative Order on Consent ("Second Modification").

4. This Second Modification is entered into voluntarily by EPA, MDNR, and Respondent.

5. For purposes of entering into this Second Modification, Respondent agrees that EPA and MDNR have jurisdiction to issue this Second Modification and jurisdiction over the activities required by the Second Modification. Respondent's participation in this Second Modification shall not constitute or be construed as an admission of liability or of the findings or determinations contained in this Second Modification. Further, neither the utilization of the CERCLA guidance nor the use of any CERCLA terms contained in this Second Modification shall constitute or be construed as an admission by Respondent that the actions regarding the slag pile are a response or removal action under CERCLA. Respondent agrees to comply with and be bound by the terms of the Second Modification.

6. Nothing in this Second Modification changes, modifies, or supercedes any of the terms of the Order, except as specifically provided for herein. All provisions of the Order, including all findings of fact, determinations, work to be performed, and appendices, work plans, and schedules incorporated as part of the Order, remain in full force and effect, except as specifically provided for in this Second Modification.

## II. MODIFICATIONS

7. Slag Pile. The Parties agree to eliminate the requirements in the Order requiring Respondent to evaluate and implement short-term measures to control run-off and erosion from the slag pile, and to prepare and submit a Slag Pile Response Options Evaluation Report. Instead, the Parties' intent with respect to the slag pile is to proceed with an expedited final

response action for the slag pile. Accordingly, Paragraphs IV.1 and IV.3 of Appendix A are stricken in their entirety, and replaced with a single new paragraph IV.1, as follows:

**IV.1. Final Slag Pile Response Action**

a. Engineering Evaluation/Cost Analysis (EE/CA). Within fifteen days of the effective date of this Second Modification, Respondent shall prepare and submit to EPA and MDNR for review and approval an Engineering Evaluation/Cost Analysis Report ("EE/CA") for the Slag Pile in accordance with EPA's "Guidance on Conducting Non-Time-Critical Removal Actions under CERCLA", OSWER Directive No. 9360.0-32, August 1993. The goals of the EE/CA are (i) to satisfy all environmental review requirements for selection of a final response action at the Slag Pile; (ii) to satisfy administrative record requirements necessary to document the final response action for the Slag Pile; and (iii) to provide a framework for evaluating alternative response actions for the Slag Pile. The EE/CA shall include, but is not limited to, the following:

1. An identification of removal action objectives, as more specifically set forth in OSWER Directive 9360.0-32; objectives shall include, but not be limited to, prevention of storm water runoff, including collection and containment of stormwater runoff and subsurface flow from the slag pile and treatment of collected water in Respondent's on-site wastewater treatment facility prior to discharge and contaminant seepage and/or run-off, control of wind and water erosion, prevention of direct human contact other than employees or contractors of Doe Run, flood protection, long-term stability, visual compatibility with the surrounding area, and minimization and mitigation of wetlands disturbance;

2. An identification and comparative analysis of removal action alternatives, analyzing effectiveness, implementability and cost, as set forth in OSWER Directive 9360.0-32. Respondent shall analyze the following alternatives, and any other alternatives necessary to produce a range of viable alternatives from which EPA and MDNR may select a final removal action for the Slag Pile:

- i. Relocation of the slag to a landfill meeting hazardous waste disposal requirements and restoration of the site;
- ii. On-site treatment and off-site disposal at a Subtitle D landfill;

iii. Re-smelting of the slag, or other legitimate recycling of the slag;

iv. Berm, flood protection, storm water collection basin and treatment of collected water prior to discharge, and final cover for the eastern portion of the waste management area (WMA) identified in the Missouri Metallic Minerals Waste Management Act Permit, as the current active portion of the WMA;

v. Berm, flood protection, storm water controls, and final cover at existing slag pile footprint;

vi. Berm, flood protection, storm water collection basin and treatment of collected water prior to discharge, and final cover with minimal expansion of existing slag pile footprint.

In the EE/CA, Respondent shall address and evaluate each alternative on an individual and comparative basis with respect to each of the identified objectives of the removal action. The EE/CA shall include or incorporate by reference all geotechnical, environmental, and any other sampling and analyses, and all other information necessary to evaluate and compare the removal action alternatives for purposes of selecting a final removal action for the slag pile.

3. An estimated schedule for design and construction of the recommended alternative.

4. A description of how construction could be phased, to the extent practicable, to provide early control of erosion and runoff and flood protection during construction of the recommended response action.

5. An estimate of the acres of wetland impacted or destroyed by implementation of each alternative.

6. A recommended removal action alternative.

b. Wetland Mitigation Plan. Within 45 days of the effective date of this Second Modification, Respondent shall submit to EPA and MDNR for review and approval a Wetland Mitigation Plan for the recommended

alternative evaluated in the EE/CA, which addresses mitigation of wetlands in compliance with applicable or relevant and appropriate requirements (i.e., Sections 404 and 401 of the federal Clean Water Act).

c. All sampling related to the slag pile and adjacent wetland and waterways for purposes of Natural Resource Damage Assessment shall be completed prior to construction of the Final Slag Pile Response Action.

d. Following EPA and MDNR review and approval of the EE/CA, EPA and MDNR will, after providing opportunity for public comment on the final EE/CA Report in accordance with the NCP at 40 C.F.R. §§ 300.415 and 300.820, select the removal alternative for the Slag Pile that EPA and MDNR determine is appropriate for the Slag Pile and protective of human health and the environment.

e. Respondent is not obligated by this Modification to implement or perform the slag pile response action. If EPA and MDNR select the recommended removal alternative for the slag pile, the intent of the Parties is to expeditiously negotiate and enter into an additional modification of the Order that would require Respondent to implement, operate, and maintain the slag pile response action.

8. Accelerated Soil Replacement. The Parties hereby agree to accelerate the rate of soil replacement for all residences where soil lead levels exceed 800 parts per million. Paragraph I.E.d of Appendix A of the original Order is stricken and replaced by a new Paragraph I.E.d as follows:

I.E.d. Doe Run shall replace all yard soils at all occupied residential properties not owned by Doe Run with soil lead levels exceeding 800 parts per million by December 15, 2004. With respect to properties owned by Doe Run, Doe Run shall replace soils at all quadrants of residential properties that exceed 2500 parts per million lead by December 15, 2004, but only if the property is located outside the "buffer zone" as shown on the map attached hereto as Appendix A. After December 15, 2004, Doe Run shall replace, or if approved, treat soils with soil lead levels exceeding the soil lead cleanup level at all remaining residential properties other than vacant properties owned by Doe Run within the buffer zone shown on Appendix A level at the rate of at least 60 residential yards or high child-use areas per year. Properties needing soil replacement should be prioritized in accordance with

the EPA-approved Community Soil Cleanup Plan dated January 4, 2002.

9. Oversight Cost Reimbursement Deferral.

a. EPA agrees, in consideration of the Work to be performed by Respondent pursuant to this Second Modification, to defer until March 31, 2005 all oversight cost reimbursement payment demands for the following Administrative Orders on Consent to which EPA and Respondent are parties:

Name	Docket No.
In the Matter of St Francois County Mining Area	VII-97-F-0002
In the Matter of St Francois County Mining Area	CERCLA-7-2000-0015
In the Matter of Federal Tailings Pile	VII-97-F-0009
In the Matter of Elvins Mine Tailings Site	CERCLA-7-2000-0023
In the Matter of Leadwood Mine Tailings Site	CERCLA-7-2000-0022
In the Matter of Doe Run Resources Corporation	RCRA-7-2000-0018 and CERCLA-7-2000-0029
In the Matter of Big River Mine Tailings Site	VII-94-F-0015
In the Matter of Bonne Terre Superfund Site	CERCLA-7-2000-0024
In the Matter of Bonne Terre Superfund Site	CERCLA-7-2000-0025
In the Matter of OU 1 Madison County Mine Sites	CERCLA-7-99-0013

b. EPA's agreement herein to defer oversight cost reimbursement is conditioned upon Respondent's continued compliance with the Order, including the Work required by this Modification. If at any time Respondent is in substantial non-compliance with the Order, EPA's agreement herein to defer making demands for oversight cost reimbursement is null and void.

c. When this modification becomes effective, EPA will make best efforts to promptly provide Respondent with itemized cost summaries of oversight costs through December 31, 2003, and EPA will also provide Respondent with updated cost summaries on a periodic basis during the deferral period.

d. Notwithstanding EPA's agreement herein to defer oversight cost payment demands until March 31, 2005, Respondent's existing obligation to reimburse EPA for its oversight costs under each of the above-listed Consent Orders remains in full force and effect, and payment of the entire amount of such oversight costs for each order will be due upon receipt of a demand for payment from EPA at the end of the deferment period. Respondent agrees that it will not dispute any demands for payment of oversight costs following the deferment period on the grounds that the demand for payment is not timely.

e. Should Respondent declare any dividends to its stockholders, other than for distributions in accordance with the Tax Sharing Agreement between Doe Run and its parent corporation, Respondent must, prior to payment of such dividends, provide financial assurance to complete the number of residences remaining that are subject to the accelerated cleanup agreed to in Paragraph 8 of this Second Modification. Respondent shall establish a financial assurance instrument meeting the description of such an instrument found in 40 CFR § 264.143 in an amount equal to \$13,500 times the number of accelerated cleanup residences remaining to be remediated. This amount shall be reduced as additional accelerated cleanup residences are completed. Should Doe Run fail to complete remediation of the remaining accelerated cleanup residences by December 15, 2004, the funds remaining under the financial assurance instrument will be made available for use by EPA if it chooses to complete the work.

10. All occurrences of "Slag Pile Response Options Evaluation Report" in Appendix A of the Order (Statement of Work) are hereby changed to "Engineering Evaluation/Cost Analysis (EE/CA)".



11. Water Bill Reimbursement. Doe Run shall provide limited water bill reimbursement for property owners who have their yard soils excavated pursuant to the Order or the December 2001 AOC. For any property owner who already has had or in the future has soil excavated by Doe Run pursuant to the Order or the December 2001 AOC, Doe Run shall reimburse the property owner for the increase in water usage as reflected in the differences of water bills of the two months immediately following excavation from the same two months from the previous year. Within 60 days of the effective date of the Order, Doe Run shall send each property owner who has had their yard excavated a written offer for water bill reimbursement, explaining what will be reimbursed and requesting authorization from the landowner for Doe Run to obtain the appropriate water bills for the property owner from the City of Herculaneum. Doe Run shall obtain the appropriate water bill records from the City of Herculaneum and make reimbursement payments to a property owner within 60 days of receipt of authorization from the property owner. Doe Run shall maintain records of all property owner requests for reimbursement and Doe Run payments and other correspondence from Doe Run to property owners, and shall make such records available to EPA and MDNR upon request.

12. As part of the NRDA Pre-Assessment Report that Respondent is required to prepare pursuant to Section IV, Paragraph 7 of the Statement of Work for the Order, Respondent shall include a preliminary habitat restoration plan for returning the functions, uses and services provided by the floodplain wetlands that are currently being used to store slag and for the floodplain wetlands altered by any restoration process and a compensation plan for those functions, uses and services that are not restored due to physical loss and/or chemical contamination.

13. Doe Run hereby agrees that with respect to residences it owns that are located within the area shown on Appendix A hereto, once such properties become vacant, they will not ever be used for residential purposes. The parties to this Second Modification understand that this paragraph 13 does not modify or amend paragraph 22 of the April 26, 2002, Settlement Agreement between Doe Run and the state of Missouri, nor does it constitute any agreement by the state that the area identified in this paragraph will never expand based on re-deposition data or other relevant information developed at the site.

### III. PUBLIC PARTICIPATION

14. This second modification shall be subject to a public comment period of at least thirty (30) days during which the EPA will make this modification available for public comment.

15. Following the public comment period, EPA, MDNR, and the Natural Resource Trustees will determine any appropriate changes to the second modification as a result of public comment and notify Respondent.

IV. EFFECTIVE DATE

16. This Second Modification is effective as of the date of Respondent's receipt of a fully-executed copy of this Second Modification.

IT IS SO ORDERED

5/17/04  
Date

William A. Spitzer  
for James Gulliford  
Regional Administrator  
Environmental Protection Agency  
Region VII

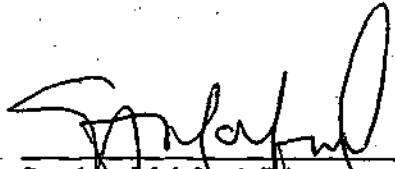
For the United States Environmental Protection Agency  
Region VII:

4/26/04  
Date


David Cozad  
David Cozad  
Associate Regional Counsel

For the Missouri Department  
of Natural Resources:

5/12/04  
Date

  
Stephen Mahfood, Director,  
Missouri Department of Natural Resources

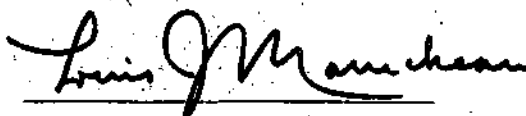
April 26, 2004  
Date

  
Shelley Woods  
Assistant Attorney General  
Office of the Attorney General of Missouri

The UNDERSIGNED PARTY enters into this Second Modification of Administrative Order on Consent, Docket No. RCRA-7-2000-0018, CERCLA-7-2000-0029.

For The Doe Run Resources Corporation:

22 APR 04

A handwritten signature in black ink, appearing to read "Louis J. Maruchrau", written over a horizontal line.

Date

Name  
Title

LOUIS J. MARUCHRAU  
VICE PRESIDENT LAW

